



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004013

First-tier Tribunal Nos: HU/50438/2022  
IA/00697/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 8<sup>th</sup> of March 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**KHADIJA BI**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Pipe, Counsel, instructed by Equity Law Chambers  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**Heard at Field House on 31 January 2024**

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan. Her case previously came before the Upper Tribunal when I found an error of law in the decision and reasons of the First-tier Tribunal Judge. That decision is appended. The hearing was adjourned for a resumed hearing confined to evidence and submissions as to the factors to be considered in a balance sheet assessment of the proportionality of the Respondent's decision.
2. An updated bundle and skeleton argument were served in advance of the hearing on 17 January 2024. Although Mr Clarke had not received this, Mr Pipe helpfully provided him with both a hard and a soft copy and he was given time to read these.

*Hearing*

3. The Appellant gave evidence. She adopted her statement and was then cross-examined fairly extensively by Mr Clarke as to the reasons she did not come to the United Kingdom sooner following the death of her husband, Mohammed Nazir's first wife. She was asked why she did not marry when her fiancée visa was still valid and she confirmed that firstly her husband had a heart attack, and secondly she accepted that although she underwent a talaq divorce in 1993, she has never had documentary evidence of that divorce. She did accept that, in the absence of that evidence, she would not have been able to marry in the UK.
4. Mr Clarke asked the Appellant about her husband's finances based on her application form for a fiancée visa where it was stated that he had money for a pension, he had a number of properties and also more than £40,000 in savings. The Appellant stated she was unaware of the details of his finances, she had not inherited anything from him when he died and that essentially his property and money went to his son by his first wife. She also stated that she did not discuss this with her husband before he died and she did not know who filled out the application form in support of her fiancée visa, possibly it was his son.
5. The Appellant confirmed that when she entered the UK she lived with her husband and looked after him due to the fact he had an amputated leg, that she had left the matrimonial home about five to six months ago because it was his son's property and she had to leave. In relation to the circumstances in Pakistan, she stated that her brothers had previously lived with her until they died, one of them about ten years ago and one about four to five years ago. She said her husband had visited her regularly until his leg had been amputated and that had been perhaps two to three years before she came to the UK. She confirmed that the property where she lived in Pakistan belonged to her husband and that she had given the keys to him. She did not know what had happened to that property.
6. In terms of her husband's family, she said his parents in Pakistan had passed away and most of his family had come to the United Kingdom. She confirmed in relation to her GP, Dr Ahmed, that he was in Peterborough and that whilst now she was intending to stay in Oldham she would move her GP there but she confirmed she had lived with her husband in Peterborough and that she would still stay in the former matrimonial home when she visited. She said that his son was living there but he would go elsewhere when she visited and her nephew from Derby would accompany her. She confirmed she had not been back to the memory clinic since March 2023.
7. The Appellant denied that she could return to her husband's house in Pakistan. She said that she wished to stay here because her husband's grave is in the UK and that was where she got peace. She stated she did not have any proof that her husband's son had inherited all his money and possessions. The Appellant accepted that she did live in Pakistan briefly on her own after her brother had died, but it was very difficult and she was not leaving the house and that she did not have any further family in Pakistan.
8. In response to my questions, she said that there were no other family members in Peterborough. She said that she did not have a very good relationship with her husband's son, they did not have much communication and she visited Peterborough once a month. In terms of her family in the UK, she said she has

one sister in Oldham who she lives with, one sister in Nottingham, a niece in Oldham, two nephews in Oldham, one nephew in Derby and four nephews in Bradford. She confirmed she was living with her nephew Ansar Mahmood along with his wife and two children, herself and her sister; that there were four bedrooms and also that the family owned the property next door. In relation to the fiancée visit visa the Appellant stated she was unable to pass the English language test because of her memory problems.

9. There was no re-examination by Mr Pipe.
10. The Appellant's nephew, Ansar Mahmood, was then called to give evidence. He confirmed the contents of his statement and that he was living with the Appellant, his mother, his wife, his two sons, also his elder brother and his elder brother's wife. I put it to the witness that his auntie, the Appellant, had not mentioned that the older brother and his wife lived there but he confirmed that they do live there, the family did own the house next door but it was rented out to tenants, and in terms of the arrangements that one of his children was a few months old and the other was still very small so that he, his wife and their two sons shared one room and that the Appellant, as stated, had her own room.
11. In relation to the property in Pakistan, the witness stated that this had been inherited by the Appellant's husband's son and that they had started a claim for a portion of her husband's pension. When asked why it was that the Appellant was living with him, he stated that a few weeks before he passed away the Appellant's husband asked to see them in the hospital, that he had travelled there with his brother, his mother and the Appellant and also her husband's son was there and the Appellant's husband asked him to look after his auntie.
12. In cross-examination, the witness confirmed that the Appellant had moved in with him about six months ago in September 2023, that she had not moved earlier because people were paying respects to her and she wished to pay respects to her husband including the annual prayer. He confirmed that the Appellant's husband's son had inherited everything, he was not sure why he had not made provision for the Appellant but her husband wanted to make sure she was well and happy. He was not sure why there was no documentary evidence before the Tribunal. The witness confirmed that he would visit his auntie in Pakistan when she was living there every few years, that her husband would visit her once a year or every six months, that she had lived in his house for 25 years, she had been living with her two brothers but they had also passed away in 2017 and in 2020 and that he thought that this had had a big impact on her mental health, as a consequence of which she suffers from low moods, depression and anxiety and that being around her family is a big support for her.
13. The witness confirmed that the Appellant's husband's first wife had passed away about six or seven years ago, that the children of her brothers in Pakistan who had passed away were all in the UK, but the brothers' wives were still in Pakistan. He confirmed that there were no other family members in Pakistan and that her husband did not have family members in Pakistan, he had brothers who passed away and one brother and one sister were living in the UK.
14. In re-examination, the witness said that the Appellant could not go back to the house in Pakistan because it had been given to her husband's son and he wants to live there himself when he visits the country, that she would be unable to stay

with her sisters-in-law who are not terribly well and that she has not been in communication with them since her brothers, their husbands, had passed away.

15. In his submissions, Mr Clarke submitted that the circumstances had changed since the Secretary of State's refusal decision because at that point the Appellant's Islamic husband had been alive. Due to the fact that he had died, the Appellant wishes to remain in order to visit his grave and he accepted that she was doing that. She asserts that she will be destitute in Pakistan and would be unable to live on her own for cultural reasons and that effectively she has no money and no home. However, he noted that there was no documentary evidence in support of that contention.
16. The application form showed that her husband did have fairly substantial assets, including three properties, one in Peterborough where he lived, one that he rented out and a property in Pakistan, plus a pension and savings. The evidence was that his son had inherited everything and that the Appellant's nephew was asked to care for her. Mr Clarke sought to rely on TK (Burundi) [2009] EWCA Civ 40 and a failure to evidence what goes to the core of the case and the Appellant's financial situation. In her application form, the Appellant said she had friends and relatives in Pakistan, so there would be a social circle and her two sisters-in-law. Mr Clarke accepted there was a relative amount of consistency regarding her brothers in Pakistan and it was also clear that the Appellant had been living as a single woman in that house with family in the UK once they had died.
17. Mr Clarke submitted there was some confusion as to why the Appellant came to the UK when she did, in terms of the death of her husband's previous wife, but then she subsequently said she wanted to look after her husband after her brother died. Mr Clarke submitted that the picture provided was not a candid one as to the true situation and that pivotal evidence was absent. Mr Clarke submitted there was no reason to think the Appellant would not have inherited a considerable amount of money from her husband. He accepted that she had depression and anxiety but that there was no diagnosis of cognitive impairment and he submitted that treatment would be available to her on return to Pakistan. Mr Clarke submitted the Appellant could seek entry as a visitor in order to visit her husband's grave.
18. Mr Clarke further submitted, in response to [14] of Mr Pipe's skeleton that, without a talaq divorce and evidence of the talaq divorce, the Appellant would never have been able to marry and so therefore any points raised in relation to the bereavement provisions of Appendix FM of the Rules did not bite. In conclusion, Mr Clarke submitted that the Appellant's leave in the UK was therefore always precarious, that whilst the Secretary of State's position as to the concession relating to the English language requirement was not entirely clear he accepted that that concession had been made but he maintained that the circumstances now are not in fact as they are put forward by the Appellant. Mr Clarke referred to the judgment in Agyarko [2017] UKSC 11 at [60] and whether there were unjustifiably harsh consequences. He submitted that a fair balance had been struck as it was not possible to be satisfied the circumstances were as claimed and that the balance falls against the Appellant.
19. In his submissions, Mr Pipe relied on his skeleton argument. He submitted that Article 8(1) was engaged on the basis of private and family life and that that had been accepted and the question therefore was one simply of proportionality. He

confirmed that paragraph 276ADE of the Rules had not been argued before the First-tier Tribunal and it was his case that it was the cumulative private and family life that rendered the decision to remove the Appellant disproportionate. Mr Pipe submitted that the Appellant's husband had passed away on 21 November 2022. He accepted that she was admitted by the Secretary of State as a fiancée, however they had not been able to marry firstly because her husband was gravely ill, and secondly because no documents were available at that time to show that the Appellant had undertaken a talaq divorce in 1993. He did not accept they would never have been available, they could have been sought from Pakistan, however not at that point in time within the six months.

20. Mr Pipe submitted that the Appellant was in a difficult situation, as her husband's second wife she had been unable to come to the United Kingdom earlier and was then unable to pass the English language test. He submitted that the evidence from her nephew was credible, which was not to say that the Appellant was not credible but rather her memory and detail was lacking. Mr Pipe submitted her account also rings true in terms of societal norms, that it was not incredible that her husband passed his estate onto his son from his first marriage and made separate arrangements for her to be looked after. He submitted that there had been a mourning period and religious rites in the first year following the death of her husband, there was nothing incredible about that and it was only after that, that she moved to Oldham to live with her nephew and her sister and their family. Mr Pipe submitted the Appellant is a 66 year old widow with no direct family in Pakistan, that her brothers have passed away and effectively she has become estranged from their wives and the rest of her family are in the UK.
21. Mr Pipe submitted the Appellant has close relationships in the UK with her sisters and her nephews who have taken responsibility for looking after her. She is unable to return to live in the former matrimonial property in Pakistan because her husband's son has taken that for himself. There was medical evidence including from a memory clinic. Mr Pipe submitted the depression and anxiety the Appellant had been diagnosed with would impact on her cognitive function and that the dose of Mirtazapine had been increased. He submitted that the Appellant receives succour from visiting her husband's grave and that is a factor which is part of her private life and her physical and moral integrity, that having that nearby is a key part of her wellbeing and would simply not be possible if she were in Pakistan. Mr Pipe submitted there was evidence of her nephew's finances in the bundle as a consequence of which he was able to support her financially and there would be no adverse impact on the economic wellbeing of the UK. He submitted that she has lost her ties in Pakistan and that a combination of all the factors cumulatively outweigh the public interest in her removal and that the balance was tipped.
22. I reserved my decision which I now give with my reasons.

### **Notice of Decision**

23. My starting point is that it was accepted by the First tier Tribunal that the Appellant has established a private and family life in the United Kingdom and so article 8(1) is engaged and that was a preserved finding of fact. The issue, therefore, is whether the Respondent's refusal decision was proportionate.

24. In GM (Sri Lanka) [2019] EWCA Civ 1630, Lord Justice Greene held at [29] that: *“the test for an assessment outside the IR is whether a “fair balance” is struck between competing public and private interests. This is a proportionality test: Agyarko (ibid) paragraphs [41] and [60]; see also Ali paragraphs [32], [47]-[49].”*
25. I have taken into account the statutory public interest considerations, noting that, whilst it was conceded by the Respondent that the English language requirement and financial independence were factors conceded by the Respondent, these are neutral factors. I also take account of the fact that the Appellant’s family life with her husband was formed before she entered the UK, however, sadly she is no longer able to rely upon this factor and I find that section 117B(5) applies because she established her private life at a time when her immigration status in the UK was precarious, because she entered on a fiancée visa and therefore, little weight should be given to her private life.
26. Mr Clarke’s primary submission was that there is a lack of documentary evidence to support the Appellant’s contentions – as to why she came to the UK at the time she did, the circumstances if returned to Pakistan and her financial circumstances following her husband’s death. I accept that there is an absence of documentary evidence on these issues. The explanation provided by the Appellant and her nephew, Ansar Mahmood, is that her husband left all his property and money to his son by his first wife and asked her nephew to look after her. Her nephew’s evidence is that they are seeking to claim a portion of the Appellant’s husband’s pension for her. It is not clear if her husband left a will and even if he did, whether the Appellant would be able to have access to this given that she was not his wife in UK law nor in fact his unmarried partner given that her husband died several months before they were able to cohabit for a period of 2 years in the United Kingdom.
27. Consequently, I have to make a credibility assessment of the evidence of the Appellant and her nephew. With regard to the Appellant, I accept that she has been diagnosed with depression and anxiety and was prescribed Mirtazapine [AB 33] which will have had some impact on her ability to give evidence. I find that whilst she has some memory issues, the Appellant was discharged from the memory clinic by Dr Chime following an appointment on 10 February 2023 [AB 35]. I find that the Appellant’s evidence was generally coherent and also mostly consistent with the evidence of her nephew except for one matter which is the number of people living in his 4 bedroom house in that the Appellant did not mention that another nephew and his wife were also living there. However, I find this is not a material difference given that Mr Clarke took no issue with the point and, in any event, the accommodation would not be overcrowded as it could accommodate 10 people and on the evidence of the Appellant’s nephew, which I accept, there are 6 people plus two very young children.
28. Whilst it might be considered odd that the Appellant did not speak to her husband before he died about the contents of his will, I find this understandable in the context of the fact that, although they were married in 1993 and the Appellant lived in her husband’s house in Pakistan, she was his second wife, they only saw each other once to twice a year for 28 years until she joined him in the UK after his first wife had died. I find that the primary reason for applying for her to come to the UK at that time [2021] was that her husband required care due to the partial amputation of his leg and multiple health conditions. That is not to say that there was no love and affection between them but that additional factors were also in play. It is also material that there were no children of the marriage

between the Appellant and her husband, although he had a son with his first wife and it is therefore not surprising that his son inherited his estate. I accept the evidence of the Appellant's nephew that when in hospital at the end of his life, her husband asked him to look after her and that is what he has done.

29. I accept the consistent evidence of the Appellant and her nephew that there are no longer any close relatives living in Pakistan, her brothers having died in 2017 and 2020 and their wives having moved away. I also accept the consistent evidence that the Appellant's husband's son now owns the house in which she used to live. That is not to say that the Appellant would not necessarily be unable to live there but that she has no right to live there any longer.
30. I find that the Appellant had a reasonable expectation when she came to the UK in 2001 that she was coming to join her husband; that they would undertake a civil marriage as planned and that she would be able to stay in the UK on a lawful basis. Due to her husband's ill-health and the seeming inability to obtain relevant documents from Pakistan as to the Appellant's talaq divorce to a previous husband in 1993, they were unable to marry, which has left the Appellant in a difficult position. I consider that it was not anticipated that the Appellant would end up with no right to remain in the United Kingdom, having given up her life in Pakistan to join her husband in this country. Had they been able to marry within the duration of her 6 month fiancée visa then, as Mr Pipe points out, she would have qualified for ILR under the Appendix FM BPILR as a bereaved partner.
31. I also take account of the fact that the Appellant regularly visits her husband's grave and that this forms part of her private life and her physical and moral integrity: Abbasi (visits-bereavement-Article 8) [2015] UKUT 463 (IAC).
32. So in summary, I find that the factors adverse to the Appellant are: she has no right to remain in the United Kingdom and does not qualify for leave under the Immigration Rules; only limited weight can be attached to her private life which is precarious and there is an absence of documentary evidence to support her contentions that she has no family or property to return to in Pakistan. The English language and financial requirements criteria are no longer in contention and no issues arise in relation to the Appellant's suitability.
33. In the Appellant's favour are the fact that it has been accepted that article 8(1) is engaged; her residence has been lawful as she made an application to remain on the basis of her private and family life before the expiry of her fiancée visa; she is financially and emotionally dependent upon family members in the UK, in particular, her nephew, Ansar Mahmood and her sister, with whom she lives in Oldham; she would have been entitled to ILR as a bereaved partner had she been able to marry before the expiry of her fiancée visa; she suffers from anxiety and depression and is taking an anti-depressant and she has had some cognitive difficulties. I further accept the evidence that the Appellant has no right to return to her previous home in Pakistan; that her close family members there have died or left and it is likely as a widow in these circumstances that she would be isolated.
34. On the facts and evidence in this particular case, therefore, I find that the public interest is outweighed by the Appellant's private and family life in the United Kingdom *cf.* Rhuppiah [2018] UKSC 58.
35. The appeal is allowed on human rights grounds.

Rebecca Chapman

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

1 March 2024